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HOUSE BILL 3

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2007**

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE CLANDESTINE  
DRUG LABORATORY ACT; ADDRESSING THE MANUFACTURE OF  
METHAMPHETAMINE; PROVIDING FOR NOTICE, A CLANDESTINE DRUG  
LABORATORY LIST, REMEDIATION, LOANS AND RESTITUTION; IMPOSING  
PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Clandestine Drug Laboratory Act".

Section 2. DEFINITIONS.--As used in the Clandestine Drug  
Laboratory Act:

A. "clandestine drug laboratory" means a site,  
including personal and real property, structures, mobile homes,  
vehicles, recreational vehicles, equipment and all proximate

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1 areas, where:

2 (1) the manufacture of methamphetamine is  
3 taking place or has taken place or an attempt is being made or  
4 has been made to manufacture methamphetamine; or

5 (2) chemicals used in the manufacture of  
6 methamphetamine or waste materials produced in the manufacture  
7 of methamphetamine are located or have been located;

8 B. "law enforcement agency" means a police or  
9 public safety department administered by the state or a  
10 political subdivision, or a person contracting for or on behalf  
11 of a police or public safety department, where the employees  
12 are responsible for the prevention and detection of crime and  
13 the enforcement of the penal, traffic or highway laws of this  
14 state;

15 C. "manufacture" means the production, preparation,  
16 compounding, conversion or processing of methamphetamine by  
17 extraction from substances of natural origin or independently  
18 by means of chemical synthesis, but does not include the  
19 preparation or compounding of methamphetamine by:

20 (1) a practitioner, licensed or certified to  
21 prescribe and administer drugs that are subject to the  
22 Controlled Substances Act or the rules promulgated pursuant to  
23 that act, as an incident to the practitioner's administration  
24 or dispensing of a controlled substance in the course of the  
25 practitioner's professional practice; or

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1 (2) a practitioner or the practitioner's agent  
2 acting under the practitioner's supervision, or a scientific  
3 investigator registered to conduct research with controlled  
4 substances in the course of the scientific investigator's  
5 professional practice or the scientific investigator's agent  
6 acting under the scientific investigator's supervision, for or  
7 as an incident to research, teaching or chemical analysis but  
8 not for sale;

9 D. "methamphetamine" has the same meaning as  
10 prescribed in Section 30-31-7 NMSA 1978 and includes any of the  
11 precursor chemicals, regulated chemicals or other substances or  
12 equipment used in the unlawful manufacture of methamphetamine  
13 and any of its derivatives;

14 E. "mobile home" means a single-family dwelling  
15 built on a permanent chassis designed for a long-term  
16 residential occupancy and containing complete electrical,  
17 plumbing and sanitary facilities designed to be installed in a  
18 permanent or semipermanent manner with or without a permanent  
19 foundation and that is capable of being towed over public  
20 highways as a unit or in sections by a special permit;

21 F. "recreational vehicle" means a vehicle with a  
22 camping body that has its own motive power or is affixed to or  
23 is towed by another vehicle and includes motor homes, travel  
24 trailers and truck campers;

25 G. "remediation" means the cleanup, removal or

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1 destruction of chemicals or contaminants at a clandestine drug  
2 laboratory to conform with applicable department of environment  
3 rules and any action, including the destruction of property,  
4 necessary to investigate, prevent, minimize or mitigate damages  
5 to the public health or to the environment that may result from  
6 the chemicals or contaminants; and

7 H. "vehicle" means a device in, upon or by which a  
8 person or property may be transported or towed upon a street or  
9 highway, propelled by a power other than human power, including  
10 diesel fuel, gasoline, compressed natural gas, electricity or a  
11 combination of these, designed to travel along the ground by  
12 use of wheels, treads, runners or slides, and includes  
13 automobiles, trucks, trailers of any kind, motorcycles, off-  
14 highway motor vehicles, tractors, buggies or wagons.

15 Section 3. CLANDESTINE DRUG LABORATORY--PROCEDURES UPON  
16 DISCOVERY.--Upon identification of a clandestine drug  
17 laboratory by a law enforcement agency, the agency shall at the  
18 time of identification:

19 A. pursuant to law, seize and secure the  
20 clandestine drug laboratory from improper entry and order the  
21 removal of persons from the laboratory;

22 B. notify the department of public safety of the  
23 existence of the clandestine drug laboratory;

24 C. notify the department of environment of the  
25 existence of the clandestine drug laboratory; and

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1           D. post a notice of contamination in a conspicuous  
2 place at the clandestine drug laboratory.

3           Section 4. NOTICE OF CONTAMINATION TO OWNER, LANDLORD,  
4 MANAGER OR OCCUPANT.--Upon identification of a clandestine drug  
5 laboratory by a law enforcement agency, that agency shall:

6           A. if the owner, landlord, manager or occupant of  
7 the clandestine drug laboratory and, if the clandestine drug  
8 laboratory is a mobile home or recreational vehicle, the owner  
9 or manager of a mobile home or recreational vehicle space-  
10 rental or space-purchase park where the clandestine drug  
11 laboratory may be located, is present at the time of seizure of  
12 the clandestine drug laboratory, deliver a copy of a notice of  
13 contamination to the owner, landlord, manager or occupant;

14           B. if the owner of the clandestine drug laboratory  
15 and, if the clandestine drug laboratory is a mobile home or  
16 recreational vehicle, the owner of a mobile home or  
17 recreational vehicle space-rental or space-purchase park where  
18 the clandestine drug laboratory may be located, is not  
19 personally provided a copy of the notice of contamination  
20 pursuant to Subsection A of this section, then within seven  
21 business days after seizure of the clandestine drug laboratory,  
22 send a notice of contamination by certified mail, return  
23 receipt requested, to the owner at the owner's last known  
24 address contained in records of the county or municipality  
25 where the clandestine drug laboratory is located and proof of

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1 mailing shall be considered notice to the owner;

2 C. if the owner of the clandestine drug laboratory  
3 cannot be identified, acquire proof of posting a notice of  
4 contamination pursuant to Subsection D of Section 3 of the  
5 Clandestine Drug Laboratory Act, which proof of posting shall  
6 be considered notice to the owner; and

7 D. within seven business days after seizure of the  
8 clandestine drug laboratory, deliver a copy of a notice of  
9 contamination to the department of environment.

10 Section 5. NOTICE OF CONTAMINATION.--The notice of  
11 contamination required by Sections 3 and 4 of the Clandestine  
12 Drug Laboratory Act shall contain:

13 A. the word "WARNING" in large bold type at the top  
14 and bottom of the notice;

15 B. a statement that a clandestine drug laboratory  
16 was seized;

17 C. the date of the seizure;

18 D. the address or location of the clandestine drug  
19 laboratory, including the identification of structures or  
20 vehicles and, if known, a structure, room or apartment number  
21 or a vehicle registration or vehicle identification number;

22 E. the name of the law enforcement agency that  
23 seized the clandestine drug laboratory and that agency's  
24 telephone number;

25 F. a statement that hazardous substances, toxic

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1 chemicals or other residual contamination from operation of the  
2 clandestine drug laboratory may still be present;

3 G. a statement that it is a misdemeanor for a  
4 person other than the owner, the owner's agent, a lessee or  
5 renter or a transferee or assignee of the owner to enter,  
6 occupy or use the clandestine drug laboratory or otherwise  
7 knowingly and intentionally violate the provisions of the  
8 notice of contamination until remediation of the clandestine  
9 drug laboratory has taken place in accordance with department  
10 of environment rules;

11 H. a statement that it is a misdemeanor to  
12 knowingly and intentionally disturb the notice of contamination  
13 posted at the clandestine drug laboratory;

14 I. a statement that the owner of the property shall  
15 remediate the contaminated portion of the clandestine drug  
16 laboratory in compliance with department of environment rules;

17 J. a statement that failure of the owner to  
18 remediate the contaminated portion of the clandestine drug  
19 laboratory in compliance with department of environment rules  
20 may result in a fine of up to five thousand dollars (\$5,000);

21 K. contact information for the department of  
22 environment; and

23 L. a statement that until remediation is complete,  
24 selling, leasing, renting, loaning, assigning, exchanging or  
25 otherwise transferring the clandestine drug laboratory without

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1 providing notice of its existence as required by Section 11 of  
2 the Clandestine Drug Laboratory Act shall void the sale, lease,  
3 rental, loan, assignment, exchange or other transfer and may  
4 result in a fine of up to one thousand dollars (\$1,000).

5 Section 6. DEPARTMENT OF ENVIRONMENT--CLANDESTINE DRUG  
6 LABORATORY LIST--RULES.--The department of environment shall:

7 A. maintain a list of clandestine drug laboratories  
8 on the department's web site based on information received from  
9 law enforcement agencies; and

10 B. promulgate rules for assessment and remediation  
11 of residual contamination from chemicals or contaminants  
12 resulting from a clandestine drug laboratory.

13 Section 7. OWNER RESPONSIBLE FOR REMEDIATION--NOTICE  
14 VACATED.--

15 A. The owner of a clandestine drug laboratory is  
16 responsible for its remediation in compliance with department  
17 of environment rules.

18 B. Upon determination of the department of  
19 environment that a clandestine drug laboratory has been  
20 remediated in accordance with its rules, or that no remediation  
21 is required, the department shall:

22 (1) remove the clandestine drug laboratory  
23 from its web site list of clandestine drug laboratories; and

24 (2) notify the law enforcement agency that  
25 seized the clandestine drug laboratory to remove the notice of

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1 contamination from the former clandestine drug laboratory,  
2 which the law enforcement agency shall do within three business  
3 days of being notified by the department of environment.

4 Section 8. REMEDIATION BY COUNTY OR MUNICIPALITY--LOAN.--

5 A. If the owner of a clandestine drug laboratory  
6 refuses or fails to engage in remediation of the clandestine  
7 drug laboratory as established by the rules of the department  
8 of environment for remediation, or the owner or lien-holder of  
9 a clandestine drug laboratory that is a mobile home or a  
10 recreational vehicle has failed to remove the mobile home or  
11 recreational vehicle pursuant to Section 10 of the Clandestine  
12 Drug Laboratory Act, the county or municipality where the  
13 clandestine drug laboratory is located may remediate or seek a  
14 court order requiring the owner to remediate the clandestine  
15 drug laboratory as required by Section 7 of the Clandestine  
16 Drug Laboratory Act. If the county or municipality is unable  
17 to locate the owner within thirty days after the issuance of  
18 the notice of contamination, the county or municipality may  
19 proceed with remediation.

20 B. If the county or municipality in which the  
21 clandestine drug laboratory is located remediates pursuant to  
22 Subsection A of this section, the owner of the clandestine drug  
23 laboratory shall pay to the county or municipality all costs  
24 related to such remediation. If the owner refuses or fails to  
25 pay the county or municipality for its costs of remediation,

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1 the county or municipality shall be entitled to file a lien  
2 against the clandestine drug laboratory for the costs related  
3 to remediation and bring legal action against the owner for  
4 those remediation costs.

5 C. Not including a vehicle other than a mobile home  
6 or a recreational vehicle, if the county or municipality in  
7 which the clandestine drug laboratory is located remediates  
8 pursuant to Subsection A of this section, the county or  
9 municipality may apply for a loan from the New Mexico finance  
10 authority, pursuant to the requirements and procedures of the  
11 authority, to cover the costs of remediation.

12 Section 9. RESTITUTION.--

13 A. A court may require a person convicted of a  
14 crime involving the use, manufacture, production or  
15 distribution of methamphetamine at a clandestine drug  
16 laboratory to pay restitution to a public entity that took any  
17 action under the Clandestine Drug Laboratory Act. The  
18 restitution ordered may cover the reasonable costs of the  
19 actions taken.

20 B. In addition to the restitution authorized in  
21 Subsection A of this section, a court may require a person  
22 convicted of a crime involving the use, manufacture, production  
23 or distribution of methamphetamine at a clandestine drug  
24 laboratory to pay restitution to the owner of a clandestine  
25 drug laboratory who incurred remediation and other costs

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1 because of the crime.

2 Section 10. MOBILE HOME OR RECREATIONAL VEHICLE.--If a  
3 clandestine drug laboratory is a mobile home or a recreational  
4 vehicle in a space-rental or space-purchase park, and has not  
5 been remediated pursuant to Section 7 of the Clandestine Drug  
6 Laboratory Act, the park owner shall request the owner or lien-  
7 holder of the mobile home or recreational vehicle to remove it  
8 from the park within thirty days, unless the mobile home or  
9 recreational vehicle belongs to the park owner. If the mobile  
10 home or recreational vehicle is not removed within thirty days,  
11 the county or municipality where the mobile home or  
12 recreational vehicle is located shall proceed pursuant to  
13 Section 8 of the Clandestine Drug Laboratory Act.

14 Section 11. NOTICE BY OWNER TO TRANSFEREE.--

15 A. Until remediation is completed, an owner shall  
16 not sell, lease, rent, loan, assign, exchange or otherwise  
17 transfer the clandestine drug laboratory unless the owner:

18 (1) provides written notice to the purchaser,  
19 lessee, renter, borrower, assignee, exchange partner or other  
20 transferee, with a copy to the department of environment, of  
21 the existence of the clandestine drug laboratory; and

22 (2) receives a written acknowledgment, and  
23 provides a copy to the department of environment, that the  
24 notice was received by the purchaser, lessee, renter, borrower,  
25 assignee, exchange partner or other transferee.

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1           B. A formal or informal purchase and sale, lease,  
2 rental, loan, assignment, exchange or transfer agreement or  
3 contract shall be void if notice is not provided pursuant to  
4 this section and the owner shall be liable for any harm  
5 resulting from the owner's failure to comply with the  
6 requirements of this section.

7           Section 12. CIVIL PENALTIES.--

8           A. Whenever on the basis of any information the  
9 secretary of environment determines that an owner has failed to  
10 comply with the provisions of:

11                   (1) Section 7 of the Clandestine Drug  
12 Laboratory Act regarding remediation in compliance with  
13 department of environment rules, the secretary of environment  
14 may issue an order imposing on the owner a civil penalty in an  
15 amount not to exceed five thousand dollars (\$5,000), which  
16 amount may be deposited in the state treasury and credited to  
17 the hazardous waste emergency fund; or

18                   (2) Section 11 of the Clandestine Drug  
19 Laboratory Act regarding notice to a purchaser, lessee, renter,  
20 borrower, assignee, exchange partner or other transferee, the  
21 secretary of environment may issue an order imposing on the  
22 owner a civil penalty in an amount not to exceed one thousand  
23 dollars (\$1,000), which amount shall be deposited in the state  
24 treasury and credited to the hazardous waste emergency fund.

25           B. An order issued pursuant to Subsection A of this

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1 section shall become final unless, no later than thirty days  
2 after the order is served, the owner named in the order submits  
3 a written request to the secretary of environment for a public  
4 hearing. Upon that request, the secretary of environment shall  
5 promptly conduct a public hearing. The secretary of  
6 environment shall appoint an independent hearing officer to  
7 preside over the public hearing. The hearing officer shall  
8 make and preserve a complete record of the proceedings and  
9 forward recommendations based on the record to the secretary of  
10 environment, who shall make the final decision. In connection  
11 with a hearing pursuant to this section, the secretary of  
12 environment may issue subpoenas for the attendance and  
13 testimony of witnesses and the production of relevant papers,  
14 books and documents and may promulgate rules for discovery  
15 procedures. A final decision of the secretary of environment  
16 pursuant to this section may be appealed to the district court  
17 pursuant to Section 39-3-1.1 NMSA 1978.

18 Section 13. CRIMINAL PENALTIES.--

19 A. A person who knowingly and intentionally  
20 violates a notice of contamination issued by a law enforcement  
21 agency pursuant to the Clandestine Drug Laboratory Act is  
22 guilty of a misdemeanor and shall be sentenced in accordance  
23 with the provisions of Section 31-19-1 NMSA 1978.

24 B. A person who knowingly and intentionally  
25 disturbs a notice of contamination posted on a clandestine drug

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1 laboratory is guilty of a misdemeanor and shall be sentenced in  
2 accordance with the provisions of Section 31-19-1 NMSA 1978.

3 Section 14. PREEMPTION.--After the effective date of the  
4 promulgation of enforceable rules by the department of  
5 environment pursuant to the Clandestine Drug Laboratory Act, no  
6 county or municipality, including a home-rule municipality that  
7 has adopted a charter pursuant to Article 10, Section 6 of the  
8 constitution of New Mexico, shall adopt or enforce an ordinance  
9 or resolution regarding the subject matter of the Clandestine  
10 Drug Laboratory Act.

11 Section 15. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2007.